



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2004

Ms. Jo-Christy Brown
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106 East 6th Street, Suite 550
Austin, Texas 78701

OR2004-4025

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201599.

The Georgetown Police Department (the "department"), which you represent, received a request for information concerning an investigation of two named police officers. In addition, the requestor seeks:

any documents, statements, or tangible evidence that you ever arrested, investigated, or took any steps to arrest, investigate, or prosecute [former Williamson County Sheriff] John Maspero for his criminal conduct. This request includes, but is not limited to, any and all audio or videotape recordings or oral or written statements obtained concerning any criminal conduct or threats by [former Sheriff] Maspero or any alleged investigation into his criminal conduct or threats to the Chief of Police or any other officer.

You indicate that the department will release Internal Affairs Professional Standards Report II-02-2004, and other responsive information, to the requestor. You claim, however, that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.119 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

¹ Although you raise section 552.111, you have not submitted any arguments regarding the applicability of this exception. See Gov't Code § 552.301(e). We presume the department no longer intends to assert section 552.111 as an exception to disclosure and we will not further address this exception in the present ruling.

First, you contend that the portion of the present request pertaining to Mr. Maspero implicates the former sheriff's right to privacy. Furthermore, we note you have marked portions of the submitted documents relating to the investigation of the officers at issue that you contend are protected by common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). The present request, in part, asks for information "concerning any criminal conduct" by Mr. Maspero. We determine this portion of the request for police records implicates Mr. Maspero's right to privacy. We note, however, that the submitted records pertaining to alleged misconduct by Mr. Maspero are subject to a legitimate public interest. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of employee's resignation or termination), 405 at 2-3 (1983), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former sections 552.101 or 552.102). We therefore find that the submitted information pertaining to Mr. Maspero is not protected by common-law privacy and may not be withheld under section 552.101 in conjunction with the decision in *Reporters Committee*.

You also seek to withhold vehicle identification numbers and license plate numbers of motor vehicles registered in Texas, as well as Texas driver's license numbers, pursuant to common-law privacy. We note, however, that this information is not highly intimate and embarrassing and is therefore not protected from disclosure pursuant to common-law privacy. *See Indus. Found.*, 540 S.W.2d 668; *see also* Gov't Code § 552.130.² Thus, the department may not withhold the marked vehicle identification numbers, Texas license plate

² Information relating to a Texas motor vehicle driver's license, title, or registration is generally excepted from disclosure under section 552.130 of the Government Code. However, section 552.130 protects the privacy interests of the person to whom the license, title, or registration information relates. Thus, in cases where responsive motor vehicle license, title, or registration information relates to the requestor, the requestor has a right of access to the information. *See* Gov't Code § 552.023 (person has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information).

numbers, and Texas driver's license numbers under section 552.101 in conjunction with common-law privacy.

Next, you have submitted a videotape for review that is related to the investigation of the two police officers named in the request. You contend that images of police officers that appear on the videotape are excepted from disclosure under section 552.119 of the Government Code which provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. In this instance, you have not demonstrated, nor is it apparent from our review of the submitted information, that release of the images of the officers at issue would endanger the life or physical safety of the officers. We therefore determine that the department may not withhold any portion of the submitted videotape pursuant to section 552.119.

We next address your claims under section 552.108 of the Government Code. Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code §§ 552.108(a), (b). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You contend that information identifying witnesses and persons interviewed in the course of the investigation of the two named officers, which you have marked in the remaining submitted documents, is excepted from disclosure under section 552.108. We also note that one of the audio files on a compact disc you have submitted for review is related to the investigation of the two named officers. However, we note that this audio file does not contain information identifying witnesses or persons interviewed in the investigation. In the event you intend to claim that this audio file is excepted under section 552.108, we find that you have failed to establish that section 552.108 is applicable to the audio file. Thus, the audio file pertaining to the investigation at issue may not be withheld under 552.108.

With respect to the witness information you have marked in the investigation documents, you assert that release of this information could subject the individuals at issue to possible intimidation or harassment or harm the prospects for future cooperation between witnesses and law enforcement officers. This office has found that the identities of witnesses may be withheld from disclosure under section 552.108 in some circumstances. *See* Open Records Decision No. 297 (1981). Here, however, we find that you have failed to reasonably explain how release of the information could subject these individuals to intimidation or harassment. Furthermore, we find that you have failed to reasonably explain how release of the information would harm the prospects for future cooperation between witnesses and law enforcement officers. Therefore, we find that you have not adequately demonstrated that release of this information would interfere with law enforcement, and we therefore determine

that the witness information you have marked is not excepted from disclosure under section 552.108 of the Government Code in this instance.

Next, you contend that the information submitted as Exhibit D is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts information concerning an investigation that concluded in a result other than conviction or deferred adjudication, and a governmental body claiming section 552.108(a)(2) must demonstrate that the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You indicate, and the documents reflect, that the information in Exhibit D relates to closed investigations in which no charges were filed. We also note that the other audio file on the compact disc you have submitted for review is related to one of the closed investigations. Based on your representations and our review of the submitted information, we agree that section 552.108(a)(2) is applicable to the information in Exhibit D and the related audio file on the compact disc. We note, however, that basic information about a crime, an arrest, or an arrested person is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). With the exception of basic information, which must be released, we determine that the department may withhold the information in Exhibit D pursuant to section 552.108(a)(2).

In summary, with the exception of basic information, the department may withhold the information in Exhibit D, and the related audio file on the submitted compact disc, pursuant to section 552.108(a)(2) of the Government Code. The remainder of the submitted information, including the audio file and videotape related to the investigation of the two police officers named in the request, must be released to the requestor.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

³ We note that, because the submitted documents include information that is confidential with respect to the general public, in the event the department receives another request for this information from a person other than the present requestor or her authorized representative, the department should again request a decision from this office. See Gov't Code § 552.023.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 201599

Enc: Submitted documents

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(w/o enclosures)